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10/051,190	01/22/2002	Bernadette M. Gibbs	53394.000564	9683

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EXAMINER	
REICHLE, KARIN M	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/051,190	GIBBS, BERNADETTE M.	
	Examiner	Art Unit	
	Karin M. Reichle	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 July 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-22,24 and 25* is/are pending in the application.

4a) Of the above claim(s) *2,5,7 and 9-22* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3,4,6,8,24 and 25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 July 2005* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 2, 5, 7 and 9-22 are still withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4-22-05 and 2-22-05.

Specification

Drawings

2. The drawings were received on 7-28-05. These drawings are not approved by the Examiner.

The amendment to the specification could not be entered because it did not comply with 35 USC 1.121, i.e. did not show the entire paragraph. Therefore Figure 1 is still inconsistent with the description thereof on page 5, see discussion infra.

3. The drawings are objected to because Figure 1 is still inconsistent with the description thereof on page 5, second to last line, i.e. the Figure is shown partially in section but is not described as such. In Figure 1, the line from 2a should not be dashed. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from

the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claims 3-4 are objected to because of the following informalities: in claim 3, line 1 is missing a word. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claims 3-4, 6, 8 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 24 it is unclear whether Applicant is claiming the subcombination of the tab, see lines 1-2, or the combination of the tab and garment, see line 3, i.e. "attached to" not --for attachment to--.

Claim Language Interpretation

6. The claim language is interpreted in light of the definitions set forth on page 6, line 11-page 7, line 22, page 8, lines 2-4, 8-10, and 21-24, page 9, lines 19-23, page 16, line 22-page 17, line 1, and page 19, lines 7-12 and 16-18. It is further noted that claim terminology "tab chassis" is not explicitly defined. It is further noted that "tab" is defined by the dictionary as "a projection, flap or short strip attached to an object to facilitate opening, handling or identification". The "chassis" of such tab is interpreted to be the body of such tab as best understood. It is noted that a monolithically formed tab chassis has also not been claimed, i.e. the tab can be formed of integrally connected portions. It is noted that claims 24 and 25 require a dead zone attached to and located substantially in a central region of the tab chassis. This is interpreted to require a dead zone which is attached to, directly or indirectly, the central third of the tab chassis and more than 50% of which is located in such central third. It is noted that neither the claims nor the description specifically define what the extent of the central region is relative to the other regions/zones or the tab chassis nor do they require that the dead zone overlie the centerline of the tab chassis but the claim does define such zone as dividing the tab chassis into two regions, i.e. three regions/zones. Claims 24 and 25 also require a gripping zone attached to and located substantially at an edge of the tab chassis. Similarly such language will be interpreted to require a gripping zone which is attached to, directly or indirectly, an edge of the tab chassis and more than 50% of which is located at such edge.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 3-4, 6, 8 and 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson GB '067.

Claims 24-25: See the Claim Language Interpretation section supra, and '067 at the Figures, especially 5, 9-14, and, e.g., page 6, line 16-page 7, line 27, page 19, lines 17 et seq, page 20, line 22-page 21, line 8, page 23, line 20-page 25, line 5, page 25, line 23-page 27, line 27, page 31, line 23-page 32, line 20 and page 36, lines 1-18, i.e. the garment is 20, the waist regions are 40 and 38, the chassis is at least 22, the core is 26, the tab is 89 or, in other words, 90 and 44, the tab chassis is at least 90, the dead zone is 98, the first elastic zone is between 40 and 98 and the second elastic region is on the opposite side of 98 between 98 and at least the edge adjacent region 92, the gripping zone is at least a portion of 44 (it is noted the claim language "attached" includes both direct and indirect attachment). The stretch resistance of the first zone is at least as great as that of the second zone since they are formed of the same elastic material. The dead zone, i.e. the stress beam section 98, is explicitly disclosed as being formed of nonelastic material or densified or embossed portions of the chassis 90, i.e. stiffer than the portions forming the elastic regions and attached to the tab chassis. Therefore it is the Examiner's first position that the Johnson reference explicitly teaches a "dead zone" having more stretch resistance than the elastic regions. In any case, the Examiner's second position, the factual evidence of the composition of the stress beam sections is sufficient for one to conclude that the stress beam section of Johnson inherently has more stretch resistance than the elastic

regions, see MPEP 2112.01. As shown in, e.g., Figure 13, a dead zone, i.e. 124 or at least the leftmost one of 122, is attached to and has more than 50% thereof located in the central third of the chassis 90 and the gripping zone 44 is attached to and more than 50% thereof, i.e. the free portion of 44, is located at the edge of chassis 90.

Claims 3-4, 6, and 8: See the Figures specified supra.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 3-4, 6, 8, 24 and 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 25-52 of U.S. Patent No. 6,740,071 in view of Johnson '067. Although the conflicting claims are not identical, they are not patentably distinct from each other because since this application was filed after the patents, the In re Vogel one way test applies, i.e. is the invention of the application obvious in view of the invention of the claims of the patent? The answer is yes. The claims of the application are both broader and narrower than the claims of the patent. Specifically the application claims do not require 1) the dead zone necessarily be inelastic, the stretch of a first elastic region extending

from the waist region to the zone having only a greater stretch than a second elastic region on the other side of the zone and the tensile forces as claimed in claim 25 and the specifics of claims 26-52 but does require 2) a dead zone attached to and located substantially in a central region of the tab chassis as claimed in claims 24 and 25, the shape and orientation of such zone as claimed in claims 3-4 and an absorbent garment having a chassis and a core as claimed in claim 25, and thus, explicitly, the edge as claimed in claim 8. With regard to claim 6, see claim 30 of the patent. With regard to 1), in essence once the applicant has received a patent for a species or more specific embodiment he/she is not entitled to a patent for the generic or broader invention. This is because the more specific anticipates the broader. Thus the respective patent claims anticipate the application claims. See In re Goodman, supra. With regard to 2), see claims 34-39 and 48-50 and the preamble of claim 25 of '071, i.e. the tab is intended to be used with an absorbent garment and the dead zone is between and can be longer, shorter or the same length as the elastic regions, i.e. occupies some portion of the tab chassis between the two elastic regions. Furthermore see the cited portions of Johnson supra, i.e. absorbent garments are known to include a chassis and a core and zones which function as less elastic zones positioned between more elastic regions are substantially located in a center region of the tab chassis, i.e. the lengths of the regions and zone are such as to substantially centrally locate the zone, are rectangular and are oriented to have a longitudinal axis of such shape perpendicular to the longitudinal axis of the tab but parallel to the longitudinal axis of the absorbent garment. Therefore, to employ an absorbent article having a chassis and core as taught by Johnson in combination with the claimed tab would be obvious to one of ordinary skill in the art in view of the recognition that such structure of an absorbent garment is known and the desire of the application claims to be used

for, i.e. in combination with, absorbent garments. Furthermore to make the zone which functions as a less elastic zone between more elastic regions of the patent claims one which is substantially located in the center zone of the tab chassis, i.e. the lengths of the regions and zone are such as to centrally locate the zone, is rectangular and is oriented to have a longitudinal axis of such shape perpendicular to the longitudinal axis of the tab but parallel to the longitudinal axis of the absorbent garment as taught by Johnson would be obvious, see In re Siebentritt, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious). In so doing, the tab would necessarily and inevitably also have edges which function as claimed in application claim 8.

11. Claims 3-4, 6, 8, 24 and 25 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 26-54 of U.S. Patent No. 6,692,477 in view of Johnson '067. Although the conflicting claims are not identical, they are not patentably distinct from each other because since this application was filed after the patents, the In re Vogel one way test applies, i.e. is the invention of the application obvious in view of the invention of the claims of the patent? The answer is yes. The claims of the application are both broader and narrower than the claims of the respective patent. Specifically the application claims do not require 1) the dead zone necessarily be inelastic, the stretch of the first elastic region extending from the waist region having only a greater stretch than a second elastic region on the other side of the inelastic zone claimed in claim 26 and the specifics of claims 27-54 but does require 2) a dead zone attached to and located substantially in a central region of the tab chassis as claimed in claims 24 and 25, and an absorbent garment having a chassis and a core as claimed in claim 25, and thus, explicitly, the edge as claimed in claim 8. With regard to claims

3-4 and 6, see claims 26 and 31 of the patent. With regard to 1), in essence once the applicant has received a patent for a species or more specific embodiment he/she is not entitled to a patent for the generic or broader invention. This is because the more specific anticipates the broader. Thus the respective patent claims anticipate the application claims. See In re Goodman, supra. With regard to 2), see claims 35-40 and 50-52 and the preamble of claim 26 of the patent, i.e. the tab is intended to be used with an absorbent garment and the dead zone is between and can be longer, shorter or the same length as the elastic regions, i.e. occupies some portion of the tab chassis between the two elastic regions. Furthermore see the cited portions of Johnson supra, i.e. absorbent garments are known to include a chassis and a core and zones which function as less elastic zones positioned between more elastic regions are substantially located in the center region of the tab chassis, i.e. the lengths of the regions and zone are such as to substantially centrally locate the zone. Therefore, to employ an absorbent article having a chassis and core as taught by Johnson in combination with the claimed tab would be obvious to one of ordinary skill in the art in view of the recognition that such structure of an absorbent garment is known and the desire of the application claims to be used for, i.e. in combination with, absorbent garments. Furthermore to make the zone which functions as a less elastic region between more elastic regions of the patent claims one which is substantially located in the center region of the tab chassis, i.e. the lengths of the regions and zone are such as to substantially centrally locate the zone, as taught by Johnson would be obvious, see In re Siebentritt, 54 CCPA 1083 (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious). In so doing, the tab would necessarily and inevitably also have edges which function as claimed in application claim 8.

Response to Arguments

12. Applicant's remarks have been carefully considered but are deemed either deemed moot in that they have not been reraised or are deemed not persuasive for the reasons set forth supra. Specifically Applicant's remarks with regard to the claims and the prior art to Johnson are deemed not persuasive because such are deemed narrower in scope than the claim language and narrower than the teachings of Johnson, i.e. the claim language does not patentably distinguish over the teachings of Johnson for the reasons set forth supra.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K.M. Reichle

Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
October 11, 2005